

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

Bachow/Coastel, L.L.C.,)	
)	
Complainant,)	
)	
v.)	File No. WB/ENF-F-98-005
)	
GTE Wireless of the South, Inc.,)	
)	
Defendant.)	

ORDER

Adopted: March 30, 2000

Released: March 31, 2000

By the Chief, Enforcement Bureau:

1. In this order, we deny the motion filed by GTE Wireless of the South, Inc. ("GTE"), to stay the Enforcement Bureau's order (the "*Bachow-GTE Order*") requiring GTE to comply with sections 22.911(d) and 22.912 of the Commission's rules.¹ This Motion to Stay was filed on March 16, 2000, by GTE in tandem with a Petition for Waiver with the Wireless Telecommunications Bureau ("WTB"). The Petition for Waiver asks the WTB to waive the requirements of sections 22.911(d) and 22.912 as they apply to the three GTE cell sites from the *Bachow-GTE Order*. GTE's Motion to Stay seeks a stay of the *Bachow-GTE Order* until WTB has had an opportunity to rule on the Petition for Waiver.

2. In the *Bachow-GTE Order*, the Enforcement Bureau required GTE to modify three of its cell sites to prevent unlawful overlap into the Cellular Geographic Service Area ("CGSA") of Bachow/Coastel, L.L.C. ("Bachow").² In its Motion to Stay, GTE argues that the Enforcement Bureau should delay implementation of the *Bachow-GTE Order* until WTB rules on the Petition for Waiver because GTE has satisfied the four requirements that would justify a stay.³ After consulting with the WTB, we find that GTE has not satisfied the stay requirements and, therefore, deny GTE's Motion to Stay.⁴

3. First, GTE must demonstrate that it is likely to prevail on the merits. Here, GTE relies primarily on the argument that the public interest would be harmed without the stay and special circumstances exist that warrant the stay. As discussed below, we find that the public

¹ See 47 C.F.R. §§ 22.911(d), 22.912.

² See *Bachow/Coastel, L.L.C. v. GTE Wireless of the South, Inc.*, Order, DA 00-420 (rel. Feb. 29, 2000) ("*Bachow-GTE Order*").

³ See *id.* at 1-2.

⁴ See *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958); see also *Washington Metro. Area Trans. Comm'n v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977).

interest will not be harmed if GTE modifies the cell sites as instructed in the *Bachow-GTE Order*. In addition, GTE does not convincingly demonstrate that special circumstances exist that merit the granting of the stay.

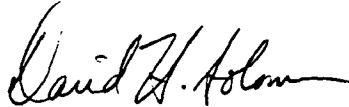
4. Second, GTE must demonstrate that it will suffer irreparable harm if the stay is not granted. GTE fails to satisfy this second requirement because GTE merely relies on economic damages to demonstrate irreparable harm. As the Commission has stated before, "courts have made it clear that, in the context of stay requests, "economic loss does not, in and of itself, constitute irreparable harm."⁵

5. Third, GTE must demonstrate that Bachow will not be harmed by the stay. GTE claims that Bachow could not currently serve the customers that GTE serves in Bachow's CGSA if GTE were to modify its cell sites. We find persuasive, however, Bachow's argument in its Opposition to Motion for Stay that Bachow is harmed because it fails to receive the protection afforded to all cellular licensees by sections 22.911(d) and 22.912 of the Commission's rules.⁶ As we indicated in the *Bachow-GTE Order*, the Commission established the regulations that GTE is violating to prevent cellular system operators from losing customers through subscriber traffic capture when the SAB of one cellular system overlaps the CGSA of the another system.⁷ Because GTE's violations of the Commission's rules harm Bachow in this manner, granting the stay only serves to exacerbate this harm, not lessen it.

6. Fourth, GTE must demonstrate that the public interest will be served if we grant the stay. GTE states that if it must modify its cell sites, then customers will lose cellular service. GTE, however, does have the option of reaching an agreement with Bachow so that GTE can continue to serve all of its customers.⁸ Thus, we believe that the public interest is already being served by the options given to GTE by the Commission's rules and by the *Bachow-GTE Order*.

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the Motion to Stay filed by GTE IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



David H. Solomon
Chief, Enforcement Bureau

⁵ See *In the Matter of Access Charge Reform*, Order, 12 FCC Rcd. 10175, ¶ 30 (rel. June 18, 1997) (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

⁶ See Bachow's Opposition to Motion for Stay at 11-13.

⁷ See *Bachow-GTE Order* at ¶ 9.

⁸ See *id.* at ¶¶ 8, 16.